

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IES UTILITIES INC.	DOCKET NO. P-840
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE
AND PROPOSING TO TAKE OFFICIAL NOTICE AND
NOTICE OF HEARING**

(Issued June 21, 1999)

On April 28, 1999, IES UTILITIES INC. (IES) filed a petition to obtain a permit authorizing it to construct, operate, and maintain approximately 1.1 miles of natural gas pipeline in Cass County, Iowa. IOWA CODE §§ 479.5 and 479.6 (1999); IOWA ADMIN. CODE 199-10.2. The pipeline will be known as the Atlantic Municipal Extension. On June 9, 1999, the Board assigned this proceeding to an administrative law judge and directed that a procedural schedule be established.

The Board's authority and jurisdiction. The Utilities Board has authority to grant permits for pipelines in whole or in part upon terms, conditions, and restrictions as to safety requirements, and as to location and route, as it determines to be just and proper. IOWA CODE §§ 479.12 and 479.18 (1999).

To obtain a permit, the petitioner must show that the services it proposes to render will promote the public convenience and necessity. IOWA CODE § 479.12 (1999). The petitioner must also satisfy the financial requirements of IOWA CODE § 479.26 (1999).

The issues. Pursuant to IOWA CODE §§ 479.7 and 479.8 (1999) and IOWA ADMIN. CODE 199-10.6, this matter will be set for a public hearing for the presentation of oral and documentary evidence and the cross-examination of witnesses concerning the public convenience and necessity issue, any safety issues, any pipeline location and route issues, the financial issues, and issues raised by objectors or any other party. The conduct of this case will be governed by Chapters 17A and 479 of the Code of Iowa.

Prepared testimony and exhibits. All parties will be given the opportunity to present and respond to evidence and argument on all issues, and to be represented by counsel at their own expense. IOWA CODE § 17A.12(4) (1999). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed in the record. IOWA CODE §17A.12(8) (1999). Unless contrary arrangements are made on the record at the hearing, all evidence will be received at the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

The submission of prepared evidence prior to hearing will help to identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. The use of

prepared testimony prevents surprise at the hearing and helps each party to prepare adequately for the hearing, so that a full and true disclosure of the facts can be obtained. IOWA CODE §§ 17A.14(1), 17A.14(3) and 479.11 (1999). This procedure also tends to diminish the length of the hearing, and spares the parties the expense and inconvenience of additional hearings.

IES will be required to submit prepared testimony and exhibits prior to the hearing. At minimum, IES's prepared testimony must address the issues listed above. The Office of Consumer Advocate, Iowa Department of Justice (Consumer Advocate), and any objectors may also file prepared testimony and exhibits before the hearing in accordance with the procedural schedule.

Parties who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector, for example, does not intend to present evidence going substantially beyond the information contained in the letter of objection, it is unnecessary for the objector to file prepared testimony. However, when a party has a substantial amount of information to present to the Utilities Board about the petition, if the information has not been previously disclosed to the Board, it should be presented in the form of prepared testimony and exhibits according to the procedural schedule established below.

Party status. Presently, IES and the Consumer Advocate are the only parties to this proceeding. IOWA CODE §§ 17A.2(8) and 475A.2 (1999). Anyone who has filed or will file an objection pursuant to IOWA CODE §§ 479.9 and 479.10 (1999) and

IOWA ADMIN. CODE 199-10.5 will also be presumed to be a party to this case. However, no objector is entitled to party status merely because that person has written a letter. In order to qualify as a party, the objector must be able to demonstrate some right or interest which may be affected by the granting of the permit. See IOWA CODE §§ 479.9, 17A.2(2) and 17A.2(5) (1999). An objector's status as a party may be challenged at the hearing, and an objector who cannot demonstrate a right or interest that may be affected by the granting of the permit will no longer be considered a party. Therefore, at minimum, objectors should be prepared to give evidence that will explain the nature of their specific rights or interests they believe should be protected, and will show how these rights or interests will be affected by the pipeline. As has already been noted, to the extent that the evidence goes substantially beyond information already communicated to the Board in an objection letter, it should be reduced to writing and filed as prepared testimony according to the procedural schedule established below.

Because objectors will be presumed to be parties up to the time of the hearing, an objector will receive copies of all documents that are filed in this docket after the letter of objection has been filed with the Board. This means that if a person files an objection after some or all of the prepared testimony and exhibits have already been filed with the Board by other parties, the objector should make direct contact with the parties who have already filed prepared testimony and exhibits in order to obtain a copy of those materials. The official file of this case will be

available for inspection at the offices of the Utilities Board at 350 Maple Street, in Des Moines. IOWA ADMIN. CODE 199-1.9(1).

Objections must be filed not less than five days prior to the date of hearing. The Board may permit later filed objections if good cause is shown. Iowa Administrative Code 199—10.5. All new objections to the petition shall be made in writing and filed in triplicate with the Executive Secretary of the Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069. After an objector has filed a letter of objection, all further communications from the objector to the Board having to do with this case (including motions or prepared testimony and exhibits) should be sent to the Executive Secretary. A party must file an original and ten copies of each communication with the Executive Secretary and the party must send one copy to each of the other parties to this case. IOWA ADMIN. CODE 199-1.8; see also IOWA ADMIN. CODE 199- 7.5(3), 7.7(11), 7.7(12), 7.7(15) and 7.8(2)(a). Along with the communication being sent, the party should file with the Board a certificate of service that conforms to IOWA ADMIN. CODE 199-2.2(16), which verifies that a copy of that document was served upon the other parties. These procedures are necessary to comply with chapter 17A of the Code of Iowa, which provides in part:

Unless required for the disposition of *ex parte* matters specifically authorized by statute, *parties or their representatives* in a contested case *shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with individuals assigned to render a proposed or final decision* or to make findings of fact and conclusions of law in that contested case, *except upon notice and opportunity for all parties to participate as shall be provided for by agency rules*. The agency's rules may require the recipient of a prohibited communication to submit the communication if written or a summary of the communication if oral for inclusion in the record of the

proceeding. *As sanctions for violations, the rules may provide for a decision against a party who violates the rules; for censuring, suspending or revoking a privilege to practice before the agency; and for censuring, suspending or dismissing agency personnel.*

IOWA CODE §§ 17A.17(2) (1999) (*emphasis added*). Objectors should examine IOWA ADMIN. CODE 199-Chapter 10 and IOWA ADMIN. CODE 199-Chapter 1.8 for other substantive and procedural rules that apply to this case.

Proposal to take official notice. A Utilities Division staff member has prepared a report concerning IES's petition. IOWA CODE § 479.11 (1999). A copy of the report, dated June 9, 1999, is attached to this order. Pursuant to IOWA CODE § 17A.14(4) (1999), the administrative law judge proposes to take official notice of the report and the facts contained therein thus making them a part of the record of this case. IOWA CODE § 17A.12(6)(c) (1999). The parties will have the opportunity to contest any information contained in the report at the hearing.

IT IS THEREFORE ORDERED:

1. Each individual, partnership, corporation, association, governmental subdivision or public or private organization, who files a letter of objection to the petition of IES in this docket will be presumed to be a party in the proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the pipeline.

2. Objections must be made in writing and filed in triplicate with the Executive Secretary of the Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069, not less than five days before the hearing. Objectors must file an original and ten copies of all subsequent communications to the Board with the

Executive Secretary at the same address, which must be accompanied by a certificate of service.

3. The following procedural schedule is established:

a. On or before July 13, 1999, IES must file prepared direct testimony relating to its petition for permit for a natural gas pipeline.

b. On or before July 20, 1999, the Office of Consumer Advocate and any objector may file prepared responsive testimony.

c. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held at 10:00 a.m. on July 27, 1999, in Conference Room 2, 350 Maple Street, Des Moines, Iowa. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

4. The administrative law judge proposes to take official notice of the report attached to this order and marked as Appendix A and of the facts contained therein. Any party desiring to cross-examine the author of the report concerning the statements contained therein must file a notice of intent to cross-examine no later than July 20, 1999.

5. Pursuant to IOWA CODE §§ 17A.12(1), 479.9 and 479.10 (1999) and 199 IAC 10.4, a copy of this order will be served by ordinary mail upon IES and the Office

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of Consumer Advocate. No persons have filed objections to the petition as of the date of this order.

UTILITIES BOARD

/s/ Amy Christensen
Administrative Law Judge

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

Dated at Des Moines, Iowa, this 21st day of June, 1999.